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Security Council Committee established pursuant to resolution 1533 (2004) concerning the Democratic Republic of the Congo

Note verbale dated 21 May 2012 from the Permanent Mission of Luxembourg to the United Nations addressed to the Chair of the Committee

The Permanent Mission of Luxembourg to the United Nations presents its compliments to the Chair of the Security Council Committee established pursuant to resolution 1533 (2004) concerning the Democratic Republic of the Congo and, in accordance with paragraph 19 of Security Council resolution 1844 (2008) and paragraph 20 of Security Council resolution 2021 (2011), has the honour to transmit herewith information on the implementation by Luxembourg of the United Nations sanctions imposed upon the Democratic Republic of the Congo (see annex).

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Annex to the note verbale dated 21 May 2012 from the Permanent Mission of Luxembourg to the United Nations addressed to the Chair of the Committee

Report of Luxembourg to the Security Council Committee established pursuant to resolution 1533 (2004) concerning the Democratic Republic of the Congo

In accordance with paragraph 7 of Security Council resolution 1857 (2008), paragraph 5 of Security Council resolution 1952 (2010), and paragraph 19 of resolution 2021 (2011), Luxembourg has the honour to transmit to the Security Council Committee established pursuant to resolution 1533 (2004) concerning the Democratic Republic of the Congo the following information concerning the specific measures that it has taken to implement effectively the restrictive measures called for in paragraphs 1 to 3 of Security Council resolution 2021 (2011).

I. Measures taken by the European Union

Under European Union law, Security Council resolutions are implemented through decisions taken by the Council of the European Union within the framework of the Common Foreign and Security Policy (CFSP).

These decisions are legally binding on member States and transpose the content of Security Council resolutions into European Union law. In order to make their content not only legally binding on member States, but also directly applicable within them, the decisions must be incorporated into European Council regulations. In application of these principles, Luxembourg and the other member States of the European Union have jointly implemented the restrictive measures against the Democratic Republic of the Congo imposed by Security Council resolutions 1596 (2005), 1807 (2008), 1857 (2008), 1896 (2009), 1952 (2010) and 2021 (2011) as follows:

Decision 2010/788/CFSP of 20 December 2010 concerning restrictive measures against the Democratic Republic of the Congo and repealing Common Position 2008/369/CFSP

This Council decision reflects the European Union's commitment to implement all of the measures set out in Security Council resolutions 1596 (2005), 1807 (2008), 1857 (2008), 1896 (2009) and 1952 (2010) and provides a specific framework for implementation of the measures imposed by these resolutions, including:

- A ban on the shipment of arms and any related materiel to all non-governmental entities and individuals operating in the territory of the Democratic Republic of the Congo and on the provision of technical or financial assistance in that regard
- The imposition of restrictive measures on individuals designated by the sanctions Committee

– A freeze on funds, other financial assets and economic resources owned or controlled directly or indirectly by persons or entities designated by the United Nations sanctions Committee.

Security Council resolutions 1857 (2008), 1896 (2009), 1952 (2010) and 2021 (2011) renewed the restrictive measures imposed by resolution 1807 (2008). The validity of Decision 2010/788/CFSP is not time-bound. Consequently, the renewal of the sanctions through resolution 2021 (2011) did not require any modification of the decision. The lists of persons and entities subject to the restrictive measures were modified by the following implementing decisions:

- **Council Implementing Decision 2011/699/CFSP of 20 October 2011** implementing Decision 2010/788/CFSP concerning restrictive measures against the Democratic Republic of the Congo
- **Council Implementing Decision 2011/848/CFSP of 16 December 2011** implementing Decision 2010/788/CFSP.

Regulations of the Council of the European Union

Council regulations implement the elements of the above decisions which fall within the competence of the European Union under the Treaty on the Functioning of the European Union, in particular with a view to ensuring their uniform application by economic operators in all member States.

These regulations are binding in their entirety and are directly applicable in all States members of the European Union as soon as they have been published in the *Official Journal of the European Union*. Funds and economic resources are frozen directly and immediately by the Council regulations. No further national implementation is necessary in this respect.

- **Council Regulation (EU) No. 889/2005 of 13 June 2005** imposing certain restrictive measures in respect of the Democratic Republic of the Congo and repealing Regulation (EC) No. 1727/2003, as modified by Council Regulation (EU) No. 1377/2007 of 26 November 2007 and Council Regulation (EC) No. 666/2008 of 15 July 2008
- **Council Regulation (EU) No. 1183/2005 of 18 July 2005** imposing certain specific restrictive measures directed against persons acting in violation of the arms embargo with regard to the Democratic Republic of the Congo, as modified by Council Regulation (EU) No. 1791/2006 of 20 November 2006.

This regulation of 18 July 2005 was supplemented by the following implementing regulations:

- **Commission Implementing Regulation (EU) No. 1097/2011 of 25 October 2011**, implementing article 9, paragraph 1(a), of Council Regulation (EU) No. 1183/2005 by replacing annex I to this regulation by the text set out in its own annex; this reflects the Security Council decision of 8 July 2011 concerning the Democratic Republic of the Congo
- **Commission Implementing Regulation (EU) No. 7/2012 of 5 January 2012**, implementing article 9, paragraph 1(a), of Council Regulation (EU) No. 1183/2005 by adding the names of two people to the list contained in annex I to that regulation in accordance with the decisions taken by the

Security Council Committee concerning the Democratic Republic of the Congo on 12 October and 28 November 2011.

II. Measures taken by Luxembourg

(a) *Arms embargo*: In accordance with article 5 of the amended Act of 15 March 1983 on arms and ammunition, the import, manufacture, transformation, repair, acquisition, purchase, possession, stockpiling, transport, transfer, sale, export and trade of arms and ammunition are subject to authorization of the Minister of Justice. Furthermore, in accordance with the amended Act of 5 August 1963 regulating the import, export and transit of goods and related technology and with Grand Ducal Regulation of 31 October 1995 related to the import, export and transit of arms, ammunition and materiel that serves especially for military use, and related technology, an export licence is mandatory for the sale, supply, transfer or export of arms and related materiel. This applies to all items on the Common Military List of the European Union. Licence applications are examined, using the relevant criteria, in light of the measures imposed by paragraph 1 of resolution 1807 (2008) and the exceptions provided in paragraphs 2, 3 and 5 thereof. Where applicable, Luxembourg will ensure that notification is given to the Committee prior to any shipment of arms or related materiel. To date, no such shipments have been made from Luxembourg. Article 9, paragraph 1, of the Act of 5 August 1963 regulating the import, export and transit of goods and related technology, as amended by the Act of 4 March 1998, refers to articles 231, 249 and 263 to 284 of the General Act on Customs and Excise of 18 July 1977, which criminalize violation of or attempted violation of the provisions of the above-mentioned Act of 5 August 1963.

(b) *Assets freeze*: Luxembourg's legislation on the financial sector establishes professional obligations and codes of conduct that must be observed at all times and in an ongoing manner by financial institutions. They must therefore exercise customer due diligence and must cooperate with the authorities, particularly the Financial Sector Monitoring Committee (CSSF). Before establishing any business relationship or conducting any transaction, institutions must verify the identity of the customer or beneficial owner. Then, throughout the relationship with the client, they must monitor transactions, including with respect to the source of funds. Any measures or international sanctions adopted at the political level by the United Nations Security Council are incorporated into Luxembourg's legislation through European Union regulations that are directly applicable under domestic law. In the event that a customer of a financial institution is targeted by an international sanction, the institution must apply the sanction by freezing the customer's assets without delay and notifying the Ministry of Finance.

(c) *Travel ban*: Congolese nationals travelling to Luxembourg require a visa in order to enter the territory of the European Union. The travel restrictions are implemented through the visa application process. Denials of visa applications are governed primarily by the Convention implementing the Schengen Agreement of 19 June 1990; it regulates the entry of third-country nationals into the Schengen area, of which Luxembourg is a part. Article 5, paragraph 1, of the Convention sets the conditions for entry into the territories of the Contracting Parties. Paragraph 2 of that article states that an alien who does not fulfil all of those conditions must be refused entry into the territories of the Contracting Parties. Since the individuals concerned by measures ordered by the Security Council do not meet the conditions

set out in article 5, paragraph 1 (e), of the Convention, which states that the alien must not be considered to be a threat to public policy, national security or the international relations of any of the Contracting Parties, these individuals may not be granted entry into the territory of Luxembourg. Pursuant to articles 15 and 18 of the Convention, this denial of entry into the territory applies both to uniform short-stay visas valid for the entire territory of the Contracting Parties and to national long-stay visas. Furthermore, the Act of 29 August 2008 on the free movement of persons and immigration provides that individuals who are not allowed into Luxembourg shall be sent back.